



House of Representatives

General Assembly

File No. 22

January Session, 2003

Substitute House Bill No. 5116

House of Representatives, March 14, 2003

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING ALTERNATIVE INCARCERATION FOR PERSONS WITH PSYCHIATRIC DISABILITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (d) of section 54-56d of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2003*):

4 (d) If the court finds that the request for an examination is justified
5 and that, in accordance with procedures established by the judges of
6 the Superior Court, there is probable cause to believe that the
7 defendant has committed the crime for which he is charged, the court
8 shall order an examination of the defendant as to his competency. The
9 court [either] may (1) appoint one or more physicians specializing in
10 psychiatry to examine the defendant, or [it may] (2) order the
11 Commissioner of Mental Health and Addiction Services to conduct the
12 examination either (A) by a clinical team consisting of a physician
13 specializing in psychiatry, a clinical psychologist and one of the

14 following: A clinical social worker licensed pursuant to chapter 383b or
15 a psychiatric nurse clinical specialist holding a master's degree in
16 nursing, or (B) by one or more physicians specializing in psychiatry,
17 except that no employee of the Department of Mental Health and
18 Addiction Services who has served as a member of a clinical team in
19 the course of such employment for at least five years prior to October
20 1, 1995, shall be precluded from being appointed as a member of a
21 clinical team. If the Commissioner of Mental Health and Addiction
22 Services is ordered to conduct the examination, [he] the commissioner
23 shall select the members of the clinical team or the physician or
24 physicians. If the examiners determine that the defendant is not
25 competent, they shall then determine whether there is substantial
26 probability that the defendant, if provided with a course of treatment,
27 will regain competency within the maximum period of any placement
28 order under this section, or whether the defendant appears to be
29 eligible for civil commitment, with monitoring by the Court Support
30 Services Division, pursuant to subdivision (2) of subsection (h) of this
31 section, as amended by this act. The court may authorize a physician
32 specializing in psychiatry, a clinical psychologist, a clinical social
33 worker licensed pursuant to chapter 383b or a psychiatric nurse
34 clinical specialist holding a master's degree in nursing selected by the
35 defendant to observe the examination. Counsel for the defendant may
36 observe the examination. The examination shall be completed within
37 fifteen days from the date it was ordered and the examiner or
38 examiners shall prepare and sign, without notarization, a written
39 report and file [it] such report with the court within twenty-one
40 business days of the date of the order. On receipt of the written report,
41 the clerk of the court shall cause copies to be delivered immediately to
42 the state's attorney and to counsel for the defendant.

43 Sec. 2. Subsection (h) of section 54-56d of the general statutes is
44 repealed and the following is substituted in lieu thereof (*Effective*
45 *October 1, 2003*):

46 (h) (1) If, at the hearing, the court finds that there is a substantial
47 probability that the defendant, if provided with a course of treatment,

48 will regain competency within the period of any placement order
49 under this section, the court shall either (A) order placement of the
50 defendant for treatment for the purpose of rendering him competent,
51 or (B) order placement of the defendant at a treatment facility pending
52 civil commitment proceedings pursuant to subdivision (2) of this
53 subsection.

54 (2) (A) Except as provided in subparagraph (B) of this subdivision, if
55 the court makes a finding pursuant to subdivision (1) of this subsection
56 and does not order placement pursuant to subparagraph (A) of said
57 subdivision, the court shall, on its own motion or on motion of the
58 state or the defendant, order placement of the defendant in the custody
59 of the Commissioner of Mental Health and Addiction Services or the
60 Commissioner of Children and Families at a treatment facility pending
61 civil commitment proceedings. The treatment facility shall be
62 determined by the Commissioner of Mental Health and Addiction
63 Services or the Commissioner of Children and Families. Such order
64 shall: (i) Include an authorization for the Commissioner of Mental
65 Health and Addiction Services or the Commissioner of Children and
66 Families to apply for civil commitment of such defendant pursuant to
67 sections 17a-75 to 17a-83, inclusive, or 17a-495 to 17a-528, inclusive, as
68 appropriate; (ii) permit the defendant to agree to participate
69 voluntarily in a treatment plan prepared by the Commissioner of
70 Mental Health and Addiction Services or the Commissioner of
71 Children and Families, and monitored by the Court Support Services
72 Division, and require that the defendant comply with such treatment
73 plan; and (iii) provide that if the application for civil commitment is
74 denied or not pursued by the Commissioner of Mental Health and
75 Addiction Services or the Commissioner of Children and Families, or
76 if, in the case of a defendant who is participating voluntarily in a
77 treatment plan, such defendant ceases to so participate voluntarily, the
78 person in charge of the treatment facility, or such person's designee,
79 shall submit a written progress report to the court pursuant to
80 subsection (j) of this section, as amended by this act, and the defendant
81 shall be returned to the court for a hearing pursuant to subsection (k)
82 of this section. The period of placement and monitoring under such

83 order shall not exceed the period of the maximum sentence which the
84 defendant could receive on conviction of the charges against such
85 defendant, or eighteen months, whichever is less. The Court Support
86 Services Division shall monitor the defendant's compliance with such
87 treatment plan and any applicable provisions of such order. If the
88 defendant has complied with such treatment plan and any applicable
89 provisions of such order, at the end of the period of placement and
90 monitoring, the court shall approve the entry of a nolle prosequi to the
91 charges against the defendant or shall dismiss such charges.

92 (B) This subdivision does not apply: (i) To any person charged with
93 a class A felony, a class B felony, except a violation of section 53a-122
94 that does not involve the use, attempted use or threatened use of
95 physical force against another person, or a violation of section 14-227a,
96 subdivision (2) of subsection (a) of section 53-21 or section 53a-56b,
97 53a-60d, 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b; (ii) to any
98 person charged with a crime or motor vehicle violation who, as a result
99 of the commission of such crime or motor vehicle violation, causes the
100 death of another person; or (iii) unless good cause is shown, to any
101 person charged with a class C felony.

102 Sec. 3. Subsection (j) of section 54-56d of the general statutes is
103 repealed and the following is substituted in lieu thereof (*Effective*
104 *October 1, 2003*):

105 (j) The person in charge of the treatment facility, or [his] such
106 person's designee, shall submit a written progress report to the court
107 (1) at least seven days prior to the date of any hearing on the issue of
108 the defendant's competency; (2) whenever he believes that the
109 defendant has attained competency; [or] (3) whenever he believes that
110 there is not a substantial probability that the defendant will attain
111 competency within the period covered by the placement order; or (4)
112 whenever the defendant has been placed for treatment pending civil
113 commitment proceedings pursuant to subdivision (2) of subsection (h)
114 of this section, as amended by this act, and the application for civil
115 commitment of the defendant is denied or not pursued. The progress

116 report shall contain: (A) [the] The clinical findings of the person
117 submitting the report and the facts on which the findings are based; (B)
118 the opinion of the person submitting the report as to whether the
119 defendant has attained competency or as to whether the defendant is
120 making progress, under treatment, toward attaining competency
121 within the period covered by the placement order; and (C) any other
122 information concerning the defendant requested by the court, [such as]
123 including, but not limited to, the method of treatment or the type,
124 dosage and effect of any medication the defendant is receiving.

125 Sec. 4. Subsection (m) of section 54-56d of the general statutes is
126 repealed and the following is substituted in lieu thereof (*Effective*
127 *October 1, 2003*):

128 (m) If at any time the court determines that there is not a substantial
129 probability that the defendant will attain competency within the
130 period of treatment allowed by this section, or if at the end of [that]
131 such period the court finds that the defendant is still not competent,
132 the court shall either release the defendant from custody or order the
133 defendant placed in the custody of the Commissioner of Mental Health
134 and Addiction Services, the Commissioner of Children and Families or
135 the Commissioner of Mental Retardation. The commissioner given
136 custody, or [his] the commissioner's designee, shall then apply for civil
137 commitment according to sections 17a-75 to 17a-83, inclusive, 17a-270
138 to 17a-283, inclusive, and 17a-495 to 17a-528, inclusive. The court shall
139 hear arguments as to whether the defendant should be released or
140 should be placed in the custody of the Commissioner of Mental Health
141 and Addiction Services, the Commissioner of Children and Families or
142 the Commissioner of Mental Retardation. If the court orders the release
143 of a defendant charged with the commission of a crime that resulted in
144 the death or serious physical injury, as defined in section 53a-3, of
145 another person, [it] or orders the placement of such defendant in the
146 custody of the Commissioner of Mental Health and Addiction
147 Services, the Commissioner of Children and Families or the
148 Commissioner of Mental Retardation, the court may, on its own
149 motion or on motion of the prosecuting authority, order, as a condition

150 of such release or placement, periodic examinations of the defendant
151 as to his competency. Such an examination shall be conducted in
152 accordance with subsection (d) of this section, as amended by this act.
153 Upon receipt of the written report as provided in [said] subsection (d)
154 of this section, as amended by this act, the court shall, upon the request
155 of either party filed not later than thirty days after the court receives
156 such report, conduct a hearing as provided in subsection (e) of this
157 section. Such hearing shall be held not later than ninety days after the
158 court receives such report. If the court finds that the defendant has
159 attained competency, he shall be returned to the custody of the
160 Commissioner of Correction or released, if he has met the conditions
161 for release, and the court shall continue with the criminal proceedings.
162 Periodic examinations ordered by the court under this subsection shall
163 continue until the court finds that the defendant has attained
164 competency or until the time within which the defendant may be
165 prosecuted for the crime with which he is charged, as provided in
166 section 54-193 or 54-193a, has expired, whichever occurs first. The
167 court shall dismiss, with or without prejudice, any charges for which a
168 nolle prosequi is not entered when the time within which the
169 defendant may be prosecuted for the crime with which he is charged,
170 as provided in section 54-193 or 54-193a, has expired. Notwithstanding
171 the erasure provisions of section 54-142a, police and court records and
172 records of any state's attorney pertaining to a charge which is nolle or
173 dismissed without prejudice while the defendant is not competent
174 shall not be erased until the time for the prosecution of the defendant
175 expires under section 54-193 or 54-193a. A defendant who is not civilly
176 committed as a result of an application made by the Commissioner of
177 Mental Health and Addiction Services, the Commissioner of Children
178 and Families or the Commissioner of Mental Retardation pursuant to
179 this section shall be released. A defendant who is civilly committed
180 pursuant to such an application shall be treated in the same manner as
181 any other civilly committed person.

182 Sec. 5. Subsection (n) of section 54-56d of the general statutes is
183 repealed and the following is substituted in lieu thereof (*Effective*
184 *October 1, 2003*):

185 (n) The cost of the examination effected by the Commissioner of
186 Mental Health and Addiction Services and of testimony of persons
187 conducting the examination effected by the commissioner shall be paid
188 by the Department of Mental Health and Addiction Services. The cost
189 of the examination and testimony by physicians appointed by the
190 court shall be paid by the Judicial Department. If the defendant is
191 indigent, the fee of the person selected by the defendant to observe the
192 examination and to testify on his behalf shall be paid by the Public
193 Defender Services Commission. The expense of treating a defendant
194 placed in the custody of the Commissioner of Mental Health and
195 Addiction Services, the Commissioner of Children and Families or the
196 Commissioner of Mental Retardation pursuant to subdivision (2) of
197 subsection (h) of this section, as amended by this act, or subsection (i)
198 of this section shall be computed and paid for in the same manner as is
199 provided for persons committed by a probate court under the
200 provisions of sections 17b-19, 17b-63 to 17b-65, inclusive, 17b-116 to
201 17b-138, inclusive, 17b-220 to 17b-250, inclusive, 17b-256, 17b-259, 17b-
202 263, 17b-287, 17b-340 to 17b-350, inclusive, 17b-689, 17b-689b and 17b-
203 743 to 17b-747, inclusive.

204 Sec. 6. (NEW) (*Effective October 1, 2003*) (a) As used in this section:

205 (1) "Eligible defendant" means a person found by the court to have a
206 significant psychiatric disability or a history of treatment for a
207 significant psychiatric disability and who currently is in need of and
208 would benefit from appropriate and available treatment programs;
209 and

210 (2) "Psychiatric disability" means a mental or emotional condition
211 that has substantial adverse effects on the defendant's ability to
212 function and requires the defendant to receive care and treatment, but
213 does not include an abnormality manifested primarily by repeated
214 criminal or other antisocial conduct.

215 (b) There shall be a pretrial program for alternative placement of
216 eligible defendants accused of a crime or crimes or a motor vehicle
217 violation or violations for which a sentence to a term of imprisonment

218 may be imposed, which crimes or violations are not of a serious
219 nature. Services pursuant to such program may be provided by the
220 Commissioner of Mental Health and Addiction Services, by the
221 Commissioner of Children and Families or through a private provider
222 approved by the Commissioner of Mental Health and Addiction
223 Services or the Commissioner of Children and Families.

224 (c) Except as provided in subsection (d) of this section, the court
225 may, in its discretion, invoke such program on motion of the
226 defendant or on motion of a state's attorney or prosecuting attorney
227 with respect to an eligible defendant (1) who agrees to disclose to the
228 court the existence of any records of any prior cases and any pending
229 cases concerning the eligible defendant that came before the courts of
230 probate regarding such eligible defendant's mental health and the
231 disposition of such cases, and (2) who can demonstrate to the
232 satisfaction of the court the benefits to be gained by invoking such
233 program, provided (A) the eligible defendant agrees to comply with
234 the conditions of such program, and (B) notice has been given by the
235 eligible defendant, on a form approved by the office of the Chief Court
236 Administrator, to the victim or victims of such crime or motor vehicle
237 violation, if any, by registered or certified mail, and such victim or
238 victims have an opportunity to be heard thereon. In determining
239 whether to invoke such program with respect to an eligible defendant
240 who has been adjudged a youthful offender under the provisions of
241 sections 54-76b to 54-76n, inclusive, of the general statutes more than
242 five years prior to the date of such motion, and notwithstanding the
243 provisions of section 54-76l of the general statutes, the court shall have
244 access to the youthful offender records of such eligible defendant and
245 may consider the nature and circumstances of the crime with which
246 the eligible defendant was charged as a youth.

247 (d) This section does not apply: (1) To any person charged with a
248 class A felony, a class B felony, except a violation of section 53a-122 of
249 the general statutes that does not involve the use, attempted use or
250 threatened use of physical force against another person, or a violation
251 of section 14-227a, subdivision (2) of subsection (a) of section 53-21 or

252 section 53a-56b, 53a-60d, 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or
253 53a-72b of the general statutes; (2) to any person charged with a crime
254 or motor vehicle violation who, as a result of the commission of such
255 crime or motor vehicle violation, causes the death of another person; or
256 (3) unless good cause is shown, to any person charged with a class C
257 felony.

258 (e) (1) Any eligible defendant who enters the program for
259 alternative placement pursuant to this section shall agree to the tolling
260 of any statute of limitations with respect to the crime or violation and
261 to a waiver of the right to a speedy trial. Such eligible defendant shall
262 appear in court and shall, under such conditions as the court shall
263 order, be released to the custody of the Court Support Services
264 Division. If the eligible defendant refuses to accept or, having
265 accepted, violates such conditions, the eligible defendant's case shall be
266 brought to trial. The period of such probation shall not exceed two
267 years.

268 (2) The court shall order that, as a condition of probation pursuant
269 to subdivision (1) of this subsection, the eligible defendant participate
270 in a treatment plan. The provider of treatment services under the
271 treatment plan shall report not less than once every ninety days to the
272 Court Support Services Division regarding the progress of the eligible
273 defendant under such plan, except, in the event of substantial
274 noncompliance with the treatment plan by the eligible defendant, such
275 report shall be made as soon as reasonably possible after such
276 noncompliance. Any eligible defendant who participates in the
277 program for alternative placement pursuant to this section shall
278 provide written consent for the furnishing of such reports to the Court
279 Support Services Division for the duration of such participation.

280 (3) The court may order that, as a condition of probation pursuant to
281 subdivision (1) of this subsection, the defendant participate in the zero-
282 tolerance drug supervision program established pursuant to section
283 53a-39d of the general statutes.

284 (4) If the eligible defendant has reached the age of sixteen years but

285 has not reached the age of eighteen years, the court may order that, as
286 a condition of probation pursuant to subdivision (1) of this subsection,
287 the eligible defendant be referred for services to a youth service bureau
288 established pursuant to section 10-19m of the general statutes,
289 provided the court finds, through an assessment by a youth service
290 bureau or its designee, that the eligible defendant is in need of and
291 likely to benefit from such services.

292 (5) When determining the conditions of probation pursuant to
293 subdivision (1) of this subsection to order for an eligible defendant
294 who was charged with a misdemeanor that did not involve the use,
295 attempted use or threatened use of physical force against another
296 person or with a motor vehicle violation, the court shall consider
297 ordering the eligible defendant to perform community service in the
298 community in which the crime or violation occurred. If the court
299 determines that community service is appropriate, such community
300 service may be implemented by a community court designated in
301 accordance with section 51-181c of the general statutes if the crime or
302 violation occurred within the jurisdiction of the community court.

303 (6) If the eligible defendant is charged with a violation of section
304 46a-58, 53-37a, 53a-181j, 53a-181k or 53a-181l of the general statutes,
305 the court may order that, as a condition of probation pursuant to
306 subdivision (1) of this subsection, the eligible defendant participate in
307 a hate crimes diversion program as provided in subsection (f) of this
308 section.

309 (f) If the court orders the eligible defendant to participate in a hate
310 crimes diversion program pursuant to subdivision (6) of subsection (e)
311 of this section, the eligible defendant shall pay to the court a
312 participation fee of four hundred twenty-five dollars. No eligible
313 defendant may be excluded from such program for inability to pay
314 such fee, provided (1) such eligible defendant files with the court an
315 affidavit of indigency or inability to pay, (2) such indigency or inability
316 to pay is confirmed by the Court Support Services Division, and (3) the
317 court enters a finding thereof. The Judicial Department shall contract

318 with service providers, develop standards and oversee appropriate
319 hate crimes diversion programs to meet the requirements of this
320 section. Any eligible defendant whose employment or residence makes
321 it unreasonable to attend a hate crimes diversion program in this state
322 may attend a program in another state that has standards substantially
323 similar to, or higher than, those of this state, subject to the approval of
324 the court and payment of the participation fee as provided in this
325 subsection. The hate crimes diversion program shall consist of an
326 educational program and supervised community service.

327 (g) If an eligible defendant released to the custody of the Court
328 Support Services Division pursuant to subdivision (1) of subsection (e)
329 of this section satisfactorily completes such eligible defendant's period
330 of probation, the eligible defendant may apply for dismissal of the
331 charges against the eligible defendant and the court, on finding such
332 satisfactory completion, shall dismiss such charges. If such eligible
333 defendant does not apply for dismissal of the charges against the
334 eligible defendant after satisfactorily completing the eligible
335 defendant's period of probation, the court, upon receipt of a report
336 submitted by the Court Support Services Division that the eligible
337 defendant satisfactorily completed the eligible defendant's period of
338 probation, may on its own motion make a finding of such satisfactory
339 completion and dismiss such charges. Upon dismissal, all records of
340 such charges shall be erased pursuant to section 54-142a of the general
341 statutes. An order of the court denying a motion to dismiss the charges
342 against an eligible defendant who has completed such eligible
343 defendant's period of probation or terminating the participation of an
344 eligible defendant in the program for alternative placement pursuant
345 to this section shall be a final judgment for purposes of appeal.

346 Sec. 7. Section 17a-486 of the general statutes is repealed and the
347 following is substituted in lieu thereof (*Effective October 1, 2003*):

348 Prior to the [arraignment] trial of a person charged [solely with the
349 commission of a misdemeanor] with a crime other than a class A
350 felony or a class B felony, except a violation of section 53a-122 that

351 does not involve the use, attempted use or threatened use of physical
 352 force against another person, the Department of Mental Health and
 353 Addiction Services shall, to the maximum extent possible within the
 354 limits of available appropriations, with the consent of [the arrested]
 355 such person, cause a clinical assessment to be performed of any such
 356 person who has previously received mental health services or
 357 treatment for substance abuse from the department or who would
 358 reasonably benefit from such services to determine whether such
 359 person should be referred for community-based mental health
 360 services. If the person is determined to be in need of such services and
 361 is willing to accept the services offered, the court shall be informed of
 362 the result of the assessment and the recommended treatment plan for
 363 consideration by the court in the disposition of the criminal case.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Mental Health & Addiction Serv., Dept.; Children & Families, Dept.	GF - Cost	Significant	Significant
Judicial Dept.	GF - Cost	Significant	Significant
Correction, Dept.	GF - Potential Savings	Significant	Significant

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 04 \$	FY 05 \$
Various Local Boards of Education	STATE MANDATE - Cost	Potential	Potential

Explanation

The bill results in significant costs to various social services agencies and the judicial branch by expanding pretrial clinical assessments, and providing for additional placements for mental health treatment and court supervision. It could also result in significant savings to the state by reducing the prison population.

Department of Mental Health and Addiction Services

This bill makes two primary changes that result in increased costs to the Department of Mental Health and Addiction Services (DMHAS). First, the bill allows the courts to place a person in a substance abuse or mental health treatment program under DMHAS. It is estimated that the resultant increase in caseload to the department due to this change will necessitate an additional four to five clinical social workers. The annual cost to DMHAS for these additional positions is estimated to be from \$191,000 to \$239,000. This provision may reduce the number of

individuals who are referred to the department's restoration unit at Connecticut Valley Hospital. However, this reduction is not expected to lead to direct operational savings as the unit and CVH as a whole are expected to still be operating at capacity even without these referrals.

Second, section 6 of the bill expands the current pretrial clinical assessment program in DMHAS, resulting in a potentially significant cost to the department. The changes in the bill represent a potential cost shift from the Department of Correction (DOC) and the Judicial Department's Court Support Services Division (CSSD), which currently provide such services, to DMHAS. It is not known how many clients who currently may receive services through DOC or CSSD would be referred to services offered under DMHAS. The service intensity of such clients is also not known. Therefore, the additional increased costs to DMHAS cannot be determined.

Department of Children and Families

Provisions contained within Sections 1 - 5 of the bill will enhance treatment options available to the Department of Children and Families (DCF) in cases involving a youth placed under the agency's care and custody by the superior court when found legally incompetent to stand trial. A small number of such clients are placed in Riverview Hospital each year for terms of up to eighteen months. Any diversion of clients from Riverview will result in no savings as the facility has a significant waiting list. Correspondingly, it is assumed that alternate placements will be pursued by the agency only if its resources allow.

The agency will experience significant costs due to implementation of Section 6 of the bill, which creates a new pretrial clinical assessment program. It is assumed that DCF would be financially responsible for treatment services deemed "appropriate and available" by the court. The number of potential clients who may be ordered into DCF-funded services cannot be determined at this time, however even a small number of such clients would result in significant unbudgeted

expenses. Assuming the need for residential treatment, an annual cost of approximately \$65,000 would result, based on an average rate of \$178 per day. The State Department of Education, in conjunction with local boards of education, would similarly incur average special education costs of up to \$27,540 per client (\$153 per diem for 180 days) for nexus placements in a residential setting.

Department of Correction / Judicial Department

The accelerated rehabilitation program established in Section 6 of the bill is expected to reduce the prison population by about 240. This could result in significant annual savings to the Department of Correction since the cost to incarcerate someone with a psychiatric condition is \$32,120 annually. The Judicial Department would experience a corresponding increase in the number of individuals on probation as a result of the bill's accelerated rehabilitation program, and it would require an additional ten probation officers to supervise them at an annualized salary cost of \$472,500. Associated fringe benefit and other expenses would be approximately \$200,000 annually. In addition, a significant cost to provide contracted mental health services would be incurred by the Judicial Department. It is anticipated that the Judicial Department's CSSD could monitor defendants placed under civil commitment in accordance with Sections 1 and 2 of the bill without the need for additional appropriations.

OLR Bill Analysis

sHB 5116

AN ACT CONCERNING ALTERNATIVE INCARCERATION FOR PERSONS WITH PSYCHIATRIC DISABILITIES**SUMMARY:**

This bill gives criminal courts more options for resolving less serious cases when the accused has a mental illness. It:

1. allows judges to send a person who is incompetent to stand trial to a treatment program rather than order confinement in Connecticut Valley Hospital's (CVH) restoration unit,
2. creates a new accelerated rehabilitation (AR) program for people with significant mental illnesses, and
3. expands eligibility for an existing pretrial mental health assessment program.

The bill also authorizes judges to order periodic examinations of incompetent people charged with crimes that caused death or serious injuries who they have placed in the Department of Mental Retardation (DMR), the Department of Mental Health and Addiction Services (DMHAS), or the Department of Children and Families' (DCF) custody. Under current law, such examinations are only explicitly permitted when a judge orders a person released from custody.

EFFECTIVE DATE: October 1, 2003

CIVIL COMMITMENT PROGRAM

By law, courts must order competency examinations when there is a question about a criminal defendant's ability to understand the court proceedings or assist in his defense. A team of mental health professionals conducts the examination and submits a court report. Currently, reports must indicate whether there is a substantial probability that, if treated, an incompetent defendant will regain competency within the time he can be held (18 months, or the maximum jail sentence for the crimes charged, whichever is shorter). Under the bill, reports must also state whether an incompetent

defendant appears eligible for civil commitment monitored by the Judicial Department's Court Support Services Division (CSSD).

As under current law, courts must hold hearings within 10 days of receiving the clinical team's report. But instead of requiring judges to send people they find likely to become competent to CVH's restoration unit, the bill also allows them to give custody to DMHAS or DCF at a treatment facility, pending civil commitment proceedings. The designated agency decides which facility to use. Custody time limits are the same as those described above. The court may consider this treatment option on its own or when the defendant or prosecutor requests it.

Currently, criminal judges cannot transfer custody for civil commitment until (1) the person has been confined at CVH's restoration unit for the maximum period allowed or (2) the court determines there is no substantial likelihood that the defendant will become competent during the restoration period.

Excluded Crimes

With the exception of people accused of nonviolent first-degree larceny, those charged with class A and B felonies (see BACKGROUND) are ineligible for the treatment option. The bill also excludes (1) people charged with drunk driving or a crime or motor vehicle violation in which another person was killed and (2) the following class C felonies:

1. sexual contact with a child under age 16,
2. second-degree sexual assault,
3. second-degree manslaughter with a motor vehicle, and
4. third-degree sexual assault with a firearm.

Custody Orders

The order placing the defendant in DMHAS or DCF custody must assign CSSD as compliance monitor. It must also include provisions:

1. authorizing the appropriate commissioner to initiate commitment proceedings in the probate court;
2. permitting the defendant to agree to comply with a treatment plan

the agency devises and other conditions the court imposes in lieu of commitment; and

3. requiring the person in charge of the treatment facility, or his designee, to give the court a written progress report when (a) the probate court denies the commitment application, (b) the custodial agency decides not to pursue commitment, or (c) a defendant who agreed to comply with a treatment plan stops doing so.

When the court receives a progress report for one of the reasons described above, it must hold a hearing.

Case Dismissals

At the end of the period specified in the court order, judges must approve the entry of a *nolle prosequi* or dismiss the criminal charges, as long as the defendant complied with the treatment plan and other conditions the court imposed.

Treatment Costs

Treatment costs are computed and allocated under existing state medical assistance program rules.

NEW AR PROGRAM

By law, AR is a program for people charged with certain crimes “not of a serious nature” who the court finds probably will not commit another offense. The bill creates a new AR program for people with a significant psychiatric disability or a history of having been treated for one. The court must find that they currently need and would benefit from appropriate treatment and that a program is available. The bill defines “psychiatric disability” as a mental or emotional condition that (1) has substantial adverse effects on the defendant’s ability to function and (2) requires care and treatment. It excludes an abnormality whose main characteristic is repeated criminal or antisocial conduct.

Either the prosecutor or defendant can ask the court to grant AR in lieu of prosecution. The defendant must convince the court that he can benefit from participating in the program. The period of probation or supervision, or both, cannot exceed two years.

Eligibility

The new AR program excludes people charged with the same crimes as are excluded from the bill's civil commitment program, described above. But unlike existing AR law, the new program may be used, at the court's discretion, by people with prior criminal drunk driving convictions or serious youthful offender adjudications less than five years old, as well as by those who have already participated in an AR program. And under the bill, the judge need not find that a defendant will probably not reoffend.

Participation Requirements

Under the bill, people admitted to the program must agree to toll the running of the statute of limitations for the charged offense and waive their speedy trial rights. They must also:

1. agree to disclose to the court the existence of records of prior and pending probate court cases concerning their mental health and each case disposition;
2. give the court access to their juvenile court records if they were adjudicated youthful offenders more than five years before their AR application; and
3. send a court-approved form to their victims by registered or certified mail, notifying them that they are seeking AR.

The judge may consider the nature and circumstances of a person's youthful offense in deciding whether to grant AR status. He must also give victims a chance to express their views.

Release Conditions

The court must hold a hearing to order defendants approved for AR released to the custody of CSSD under conditions the court sets. One condition must be participation in a treatment plan, with the provider giving CSSD progress reports every 90 days. The provider must report to CSSD as soon as reasonably possible when there is substantial noncompliance with the treatment plan. Participating defendants must give the provider written permission to make these reports as long as they are in the program.

As under current AR program rules, the court may also order the defendant to:

1. participate in a zero-tolerance drug supervision or youth service bureau program,
2. perform community service under community court supervision if charged with a nonviolent misdemeanor or motor vehicle violation, or
3. enter a hate crimes diversion program if accused of specified crimes motivated by bigotry or bias.

Participation fees and fee waivers for the above programs are the same as under the existing AR program. DMHAS or DCF may provide the mental health treatment or approve a private provider.

If the defendant refuses to accept, or accepts but later violates, the conditions of release, his case must be brought to trial.

Case Dismissals

The court must dismiss the charges if the defendant satisfactorily completes the AR program. The defendant may apply for the dismissal or the court can dismiss on its own when CSSD reports successful program completion. Under the bill, the defendant can immediately appeal if the court denies his dismissal application or terminates his participation in the program.

Upon dismissal, court records of the charges are erased.

EXPANDED CLINICAL ASSESSMENT PROGRAM

The bill expands the current voluntary clinical assessment program, which requires DMHAS, to the maximum extent possible within appropriations, to have a clinical assessment done and make a treatment recommendation to the court when an arrestee who has previously received DMHAS services or would benefit from them consents to this. The purpose of the assessment is to determine whether the person should be referred for community-based mental health services and to notify the court that he is willing to accept such services. Courts can take this information into account in deciding how to dispose of the case.

The current program covers only those accused of misdemeanors and requires the arrestee to give permission for the assessment before his first court appearance (i.e., arraignment). Under the bill, defendants

charged with any offense other than a class A or B felony can request an assessment any time before trial. Those accused of nonviolent first-degree larceny, a class A felony, can also participate.

BACKGROUND

Felony Classifications

Felonies are punishable by imprisonment, fines, or both. The range of sanctions varies with the severity of the crime, as shown in the table below.

<i>Felony Classification</i>	<i>Sentence Range (Yrs.)</i>	<i>Fine (\$)</i>
Class A (murder)	25 to 60	Up to 20,000
Class A	10 to 25	Up to 20,000
Class B	1 to 20	Up to 15,000
Class C	1 to 10	Up to 10,000
Class D	1 to 5	Up to 5,000

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0